

STATE OF MICHIGAN
COURT OF APPEALS

RHONDA WARREN and UNITED TEACHERS
OF FLINT, INC.,

UNPUBLISHED
January 15, 2015

Plaintiffs-Appellants,

v

FLINT COMMUNITY SCHOOLS,

No. 318825
Genesee Circuit Court
LC No. 12-099245-CL

Defendant-Appellee.

Before: FORT HOOD, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Plaintiffs, Rhonda Warren and United Teachers of Flint, appeal as of right the trial court's order granting summary disposition to defendant, Flint Community Schools, under MCR 2.116(I)(3). The trial court determined that the arbitrator did not exceed his authority under the parties' arbitration agreement. We affirm.

I. FACTS

Warren is a school psychologist who is covered by a collective bargaining agreement between United Teachers of Flint and Flint Community Schools. In 2007, Warren was seriously injured in a car accident and was not able to return to work. Warren's school psychologist license expired in June 2009, and Flint Community Schools terminated Warren's employment in July 2009.

In August 2009, Warren filed a grievance against Flint Community Schools. The grievance proceeded to arbitration. In February 2011, the arbitrator set aside Warren's termination because she was treated different from a similarly situated employee. After settling some details of Warren's reinstatement, the arbitrator determined that Warren may be entitled to back-pay, but the record lacked evidence of Warren's ability to work in 2009. The arbitrator directed the parties to submit additional evidence and retained jurisdiction. In June 2012, after the parties submitted additional evidence, the arbitrator determined that Warren was not entitled to back-pay because she was not able to return to work in 2009.

Warren appealed the arbitrator's decision to the circuit court, contending that the arbitrator exceeded his authority under the parties' arbitration agreement when he failed to hold a hearing on the parties' supplemental submissions. Warren moved for summary disposition under

MCR 2.116(C)(10). Flint Community Schools moved for summary disposition under MCR 2.116(I)(2), contending that the arbitrator did not exceed the scope of the parties' agreement. The circuit court determined that the arbitrator acted within the scope of the parties' agreement and granted summary disposition in favor of Flint Community Schools.

II. STANDARDS OF REVIEW

This Court reviews de novo the trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We also review de novo the trial court's decision to enforce an arbitration award and whether an arbitrator exceeded the scope of his or her authority. *Ann Arbor v AFSCME Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009); *Washington v Washington*, 283 Mich App 667, 672; 770 NW2d 908 (2009).

III. SCOPE OF AN ARBITRATOR'S AUTHORITY

Warren contends that the trial court erred when it upheld the arbitrator's award because the arbitrator's decision to accept additional evidence without holding a hearing violated the "due investigation" provision of the parties' arbitration agreement. We disagree.

Judicial review of an arbitrator's award is very limited. *Police Officers Ass'n of Mich v Manistee Co*, 250 Mich App 339, 343; 645 NW2d 713 (2002). The trial court may only vacate an arbitration award under limited circumstances, including when "the arbitrator exceeded his or her powers[.]" MCR 3.602(J)(2)(c); see *Ann Arbor*, 284 Mich App at 144. An arbitrator exceeds his or her powers when the arbitrator (1) acts beyond the material terms of the arbitration contract, or (2) the decision contravenes controlling principles of law in a way that materially prejudices the rights of the parties. *Washington*, 283 Mich App at 672. "[W]here substantive issues of a dispute are proper subjects for arbitration, procedural matters arising out of the dispute are for the arbitrator and not the courts to determine." *Bennett v Shearson Lehman-American Express, Inc.*, 168 Mich App 80, 83; 423 NW2d 911 (1987).

In this case, the "due investigation" clause of the parties' agreement provided that "[i]t shall be the function of the arbitrator, and he/she shall be empowered, except as limited below, after due investigation, to make a decision in cases of alleged violation of the specific articles and sections of this agreement." But the agreement does not define what constitutes a "due investigation," and it does not require the arbitrator to follow any particular procedure. Accordingly, whether to accept supplemental submissions and whether to hold a hearing on those submissions were procedural matters for the arbitrator to determine. We conclude that the trial court did not err when it determined that the arbitrator did not exceed the scope of his authority by accepting supplemental submissions without holding a hearing.

Warren also contends that the trial court erred because the arbitrator accepted evidence that Flint Community Schools had not previously disclosed to Warren. We reject this argument.

The party seeking reversal on appeal has the burden to provide this Court with a record that establishes the factual basis of his or her argument. *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000); MCR 7.212(C)(7). In this case, the parties' agreement provided that the parties "shall not be permitted to assert in any arbitration proceeding any ground or to reply to any evidence not previously disclosed to the other party." But Warren has not provided this

Court with a record to support her assertion that the supplemental information Flint Community Schools provided to the arbitrator was not previously disclosed to Warren. The evidence was of Warren's own statements—namely, that Warren received disability benefits through 2009 and contended on a workers' compensation application in late 2009 that she was disabled. It is hard to imagine that Warren did not know that these statements existed or that they were "not previously disclosed." We conclude that the trial court did not err when it declined to overturn the arbitrator's award on this ground.

IV. CONCLUSION

We conclude that the trial court properly granted summary disposition to Flint Community Schools because Warren has not shown that the arbitrator exceeded the scope of the parties' arbitration agreement.

We affirm. As the prevailing party, Flint Community Schools may tax costs. MCR 7.219.

/s/ Karen M. Fort Hood

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell